IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2282 OF 2006

IN

SUMMARY SUIT NO.2712 OF 2005

Wyeth Limited .... Plaintiff

versus

Nectar Laboratories Ltd .. Defendant

Mr.Bhavin Gada a/w Ms Manik Joshi i/b M & M Legal Venture for Plaintiff

Mr.Vinod Sharma a/w Mr.Arvind Kumar for defendants in support of Notice of Motion

CORAM: SMT.ROSHAN DALVI,

DATE : 14th November, 2006

P.C.

1. The suit has been filed on 31st August, 2005 as a Summary Suit for recovery of Rs.53,10,000/- which constituted the principal amount of Rs.45,00,000/-

and interest thereon. The suit is filed under a written contract dated 18th June, 1999 followed by a supplementary agreement datdd 24th January,2002 under which the parties performed their respective parts of the contract by which the defendants passed a board resolution dated 28th December, 2002 and executed certain promissory notes of various dates for the aggragate amount of Rs.56,00,00,00/- and corporate guarantee dated 22nd January, 2003.

2. The Summary Suit filed by the plaintiff is therefore based upon these written agreements, and negotiable instruments executed by the defendants thereupon.

3. The Writ of Summons was served upon the defendants by registered post on 24th October, 2005. The acknowledgment of the defendants shows the defendants' address at 10-4-41/1/1C, Hanuman Nagar, Hyderabad - 500028 at which the Writ of Summons was accepted.

4. Consequent upon such service in the Summary Suit, the defendants caused their appearance to be filed through their previous Advocate M/s Vivek Kantawalla and Co. The precise date of entering

appearance, which is mandatorily required to be made within 10 days of the service of the Writ of Summons is not shown. The plaintiffs were informed of such appearance by the letter of the defendant's first advocates dated 14th November, 2005.

5. It may be mentioned that the appearance itself was not entered within 10 days as mandated under Order XXXVII Rule 3 of the Code of Civil Procedure. Nevertheless, the plaintiffs took out a Summons for Judgment. It may be taken that the delay came to be condoned by the plaintiffs themselves. The Summons for Judgment was taken out on 15th February, 2006 and served upon the defendants through courier on 21st February, 2006. (The affidavit of service of the Summons for Judgment shows the Summons for Judgment having been sent by registered post though it was sent by courier.) The packet containing the Summons for Judgment has been returned by courier with endorsement "RTO/No such company" It further shows the endorsement " not accepting" having been struck off. This service is made at the same address of the defendants mentioned earlier.

6. The defendants failed to give instructions to their first advocates which constrained them to seek a discharge and inform the defendants about the same by their letter dated 19th January, 2006. The defendants are now represented by their present advocate.

7. Despite the fact that appearance was not entered within time, the plaintiff served the Summons for Judgment upon the defendants. Despite service at the same address, the defendants failed to show any defence by filing any affidavit in reply.

8. The exparte decree that came to be passed is therefore, correctly passed. The defendants now seek to set aside that decree. Absolutely, no case for setting aside the decree is made out. The defendants have defaulted and delayed at every stage.

9. Since the plaintiffs themselves sought to take out a Summons for Judgment, which shows desire to give to the defendants an opportunity of defending the suit, the defendants can be allowed to defend the suit after depositing the entire

principal amount claimed by the plaintiff within a specified period.

10. Hence, the following order:

> On the defendants depositing in Court, Rs.45,00,000/- within four weeks, the exparte decree passed shall be taken to be set aside and the defendants would be entitled to show their defence,if any, by filing an affidavit in reply to the Summons for Judgment which has been taken out. If the amount is not deposited within four weeks, the exparte decree passed shall stand confirmed and the plaintiffs shall be entitled to execute the decree. If the amount is deposited as stated above, the plaintiff's advocate shall send a copy of the Summons for Judgment and the affidavit in support thereof to the defendant's Advocate and take steps to bring the Summons for Judgment on board for hearing.

(Smt R.S.Dalvi, J)